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10/017,093	12/13/2001	Markus Klausner	11403/12	6511
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KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				NGUYEN, THU V
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/017,093

Filing Date: December 13, 2001

Appellant(s): KLAUSNER ET AL.

Gerard A. Messina
For Appellant

EXAMINER'S ANSWER

On August 11, 2005, the Board of Patent Appeals and Interferences ordered a return of the appeal brief submitted on December 16, 2004 because the appeal brief was defective. Responsive to the order, on August 25, 2006, the appellant submits the replacement appeal brief pursuant to 37 CFR 41.37. The examiner, herein, vacates the examiner's answer issued on February 10, 2005 and replace the examiner's answer with this presently submitted examiner's answer.

This is in response to the appeal brief filed August 25, 2006.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 20 to 26 and 29 to 39 were rejected under 35 USC 103 (a) as unpatentable over 3 references namely Van Bosch (US 6,493,629) in view of Hanson et al (US 2002/0156558) and further in view of *Lang et al (US 6,295,492)*.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

Whether, under 35 U.S.C. § 103(a), claims 20 to 26 and 29 to 39 are patentable over Van Bosch, U.S. Patent No. 6,493,629 (the "Van Bosch" reference) in view of Hanson et al., U.S. Patent Application Publication. No. 2002/0156558 (the "Hanson" reference) and further in view of Lang et al (US 6,295,492).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,493,629 Van Bosch 12-2002

6,295,492 Lang et al 9-2001

Hanson et al (US 2002/0156558) publication date 10-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 20-26, 29-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bosch (US 6,493,629) in view of Hanson et al (US 2002/0156558) and further in view of Lang et al (US 6,295,492).

As per claim 20-21, 26, 33 Bosch teaches a system for monitoring at least one apparatus comprising: at least one sensor (col.2, lines 40-42; col.3, line 67; col.4, lines 1-2); a gateway node 104 (fig.1) situated in the vehicle; and a processor 126, 130 (fig.1) for communicating with the gateway node 104 (fig.1) using wireless communication protocol (col.2, lines 52-62). Bosch does not explicitly teach a sensor for transmitting error code that concerns diagnostic information, and connecting a sensor to the controller via vehicle bus. However, Bosch teaches connecting the gateway node 104 (fig.1) to a vehicle bus 106 (fig.1). Moreover, Hanson teaches connecting sensors that send diagnostic information to the controller 130 (fig.2) via system bus 125 (fig.2) (para 0021), and Lang teaches that sensors can send codes indicating the status of components of a vehicle to a controller (col.5, lines 14-16, lines 38-40). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to replace the sensors 120 (fig.2) of Hanson with the sensors of Lang and to connect the sensors to the system bus of Bosch in order to provide diagnostic information of the vehicle subsystems to the wireless device 130 (fig.2).

As per claim 22-25, 37, Hanson teaches using CAN bus protocol (para 0021). Further as to claim 23, Bosch teaches using Bluetooth communication protocol (col.2, lines 53-57). Moreover, interrogating an apparatus for diagnostic data when the user initiates a request to

execute a diagnostic procedure, diagnosing a subsystem such as brake system, engine system would have been known.

As per claim 29-31, 34-36, comparing the error code to a look up table to determines status code to be communicated to a user, and outputting the status code by visual display or audible signal would have been well known.

As per claim 32, since Bosch teaches a hand-held cellular phone or a laptop computer (col.2, lines 65-67), Bosch obviously teaches implementing a controller to the hand-held computer.

As per claim 38-39, since Bosch teaches a wireless communication including Bluetooth communication (col.2, line 56) Bosch obviously teaches the first bluetooth protocol implemented at node 126 (fig.1) and the second Bluetooth protocol implemented at mobile device 130 (fig.1). Further, as to claim 39, refer to claim 22 above.

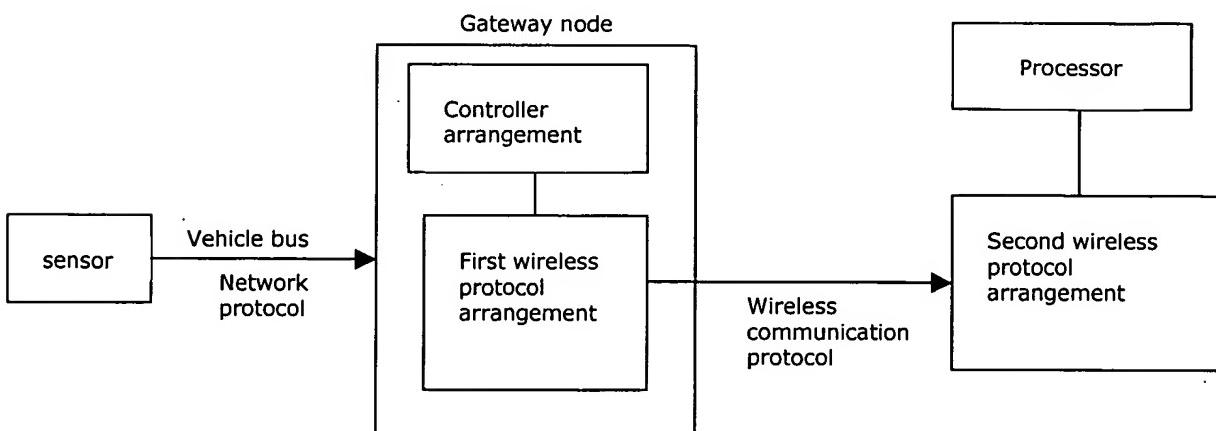
(10) Response to Argument

It is noted that the statement in page 8, third paragraph ("claims 20-26 and 29-39 were rejected under [...]"') is incorrect because the claims were actually rejected as unpatentable over Van Bosch, U.S. Patent No. 6,493,629 (the "Van Bosch" reference) in view of Hanson et al., U.S. Patent Application Publication. No. 2002/0156558 (the "Hanson" reference) and further in view of Lang et al (US 6,295,492).

a. In pages 8 through page 9 first two paragraphs, the appellant: (1) asserts that the combined teaching of Van Bosch and Hanson and Lang does not render obvious the subject matter of the claim. (2) The appellant further presenting claim 20 in the second paragraph, and (3) provides some extract from the specification page 8 and 9.

Specifically:

- In page 8, 4th paragraph ("The Office Actions to date ... does not render obvious the subject matter of claim 20"), the appellant asserts that the combined teaching of Van Bosch, Hanson and Lang does not render obvious the subject matter of claim 20. Since the appellant does not specifically provide any specific facts to support the assertion that the combined teaching of Van Bosch, Hanson and Lang does not render the claim obvious, the examiner cannot offer specific explanation on the general statement. The examiner contends that Van Bosch in combination with Hanson and Lang teaches sensor for transmitting error code that concerns diagnostic information.
- In page 8, 5th paragraph, the appellant provides a summary of the claimed subject matter of claim 20, since the explanation appears on claim 20 complicated, the examiner would like to present the claim 20 in the following drawing:



Since the appellant does not provide any other explanation except the summary of the claimed subject matter, the examiner cannot provide specific argument on the paragraph.

- With respect to the cited specification in the first two paragraphs of page 9, it is noted that several elements such as the Bluetooth hardware, the handheld computer, etc. disclosed in the specification cited in the last paragraph of the page are not found in the independent claims 20, and 33. It is, therefore, requested that the extracted specification should not be considered in determining patentability of the independent claims as instructed by the Federal Circuit: although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)).

- b. On page 9, paragraphs 3-5 ("The Van Bosch reference does not disclose or suggest, [...] In summary, it is respectfully submitted that claims 20 to 265 and 29-39 are allowable"), and on page 13, 2nd paragraph ("Accordingly, and in view of the foregoing [...], as explained herein"), the appellant asserts that none of the references discloses a gateway node that is electrically coupled to a vehicle bus in which a sensor communicates an error code to the gateway node via the vehicle bus. Further, the appellant asserts that the Office Action identifies various discrete elements of claim 20 without providing motivation for the combination. On page 13, 2nd paragraph, the appellant further

asserts that the motivation to combine the references constitutes improper hindsight reasoning. The following is the examiner's reply:

- Van Bosch teaches a system for transmitting abnormal condition of the vehicle to a remote controller wirelessly, the system comprises: a gateway node 102 (fig.1) being electrically coupled to the vehicle bus 106 (fig.1), the gateway node includes a controller arrangement 104 (fig.1) and a first wireless protocol arrangement 126 (fig.1) coupled to the controller 104 (fig.1) (col.2, lines 36-41, lines 53-58); a processor (inside the PDA or the laptop computer 130 or 132 (fig.1)) communicating with the gateway node 102 (fig.1) via a second wireless protocol arrangement (inside the device 130 or 132 (fig.1)) using a wireless communication protocol (col.2, lines 63-67; col.3, lines 1-10). Van Bosch does not explicitly teach connecting a sensor to the vehicle bus and transmitting the error code to the second wireless protocol, and Van Bosch does not explicitly teach that the sensor transmits error code. However, from the combined context in col.3, line 67; col.4, lines 1-2; and col.4, lines 38-43, Van Bosch clearly teaches the capability of transmitting any information including abnormal information of the vehicle to the second wireless protocol arrangement 132. Since the error codes are just one type of abnormal information, the first protocol arrangement 126 (fig.1) taught by Van Bosch can obviously transmit the error codes indicating abnormality information of the vehicle condition as well. It should be noticed that in col.3, line 67, and col.4, line 1-2, Van Bosch teaches that the gateway node controller 104 (fig.1) receives abnormal state (the error state) detected by any vehicle sensor. While Van Bosch does not actually illustrate sensors connected to the bus

106 (fig.1), it would have been well known that sensors detecting abnormal conditions of the vehicle subsystems such as brakes, engine, etc. are normally connecting to vehicle bus for transmitting data to the central vehicle controller via the bus. Hansen bolsters the fact that sensors 120 (fig.2) sensing conditions of vehicle subsystems such as engine, brakes, etc. are normally connected to a vehicle bus 125 (fig.2) in order to transmit detected condition of the vehicle subsystems to the central vehicle controller (Hansen paragraphs 0017-0019, 0021). It would have been obvious that the vehicle bus (106 (fig.1) of Van Bosch, and 125 (fig.2) of Hansen) common to both Van Bosch and Hansen would facilitate the efficient transfer of data from the disclosed sensor mentioned in Van Bosch to the controller 104 (fig.1) of Van Bosch. Moreover, it would have been well known that in a vehicle having a plurality of sensors, the vehicle sensors normally send unique error codes to the controller so that the controller can easily and unmistakably recognize the specific problem of a specific vehicle subsystem from the received error code. To persuade the fact that vehicle sensors are well known to transmit error codes to a controller via vehicle bus, examiner cited the patent issued to Lang in which Lang teaches, as facts, that vehicle sensors transmit error codes to the vehicle controller in col.5, lines 14-16, lines 38-41. Since the controller taught by Van Bosch can be connected to a plurality of sensors to obtain various abnormal conditions of the vehicle, an ordinary person skilled in the art at the time the invention was made would, of course, connect the well known sensors (such as the sensors taught by Hansen or Lang) that are capable of sending unique error codes to the vehicle bus 106 (fig.1) of Van Bosch the motivation for that

would be to unmistakably recognize the specific problem reported by the associated sensor.

- In response to the appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning on page 13, 2nd paragraph of the appeal brief ("Accordingly [...] as explained herein"), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). While Van Bosch concentrates on teaching wireless data communication between the vehicle gateway node 102 (fig.1) to a wireless processor 130 or 132 (fig.1), the well known features such as connecting sensors to the vehicle bus 106 (fig.1) and receiving error codes from the sensors so that the controller can unmistakably recognize a specific problem from the error codes should necessarily be existed in the system of Van Bosch so that a particular abnormal state of a subsystems of the vehicle such as the engine, the brake, etc. can be specifically detected and recognized. The teachings of Hansen and Lang just bolster the necessity of connecting the vehicle subsystems sensors that transmit error codes to the bus 106 (fig.1) of Van Bosch so that a particular abnormal condition of a specific vehicle subsystem can be detected. To a person of ordinary skill in the art, the connection of the sensors taught by Hansen and Lang to the bus 106 (fig.1) of Van

Bosch is actually a must if the objective of detecting abnormal condition of the subsystems of the vehicle of Van Bosch is to be realized, therefore, the motivation to combine the references is well within the knowledge of an ordinary person skilled in the art.

- c. In the argument provided on page 9, last paragraph through page 13, lines 1-14, the appellant just cites certain court cases concerning obviousness rejection and hindsight reasoning. The following is the examiner's comment:

Since the appellant fails to point out the specific detail and criteria in this present application that applies or similar to the specific situation of the past court cases, the court cases cited are considered irrelevant and not applicable to the present application. Concerning obviousness and hindsight reasoning, the examiner has provided detailed explanation in sections a-b above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3661

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

thuv.nguyen
THUV.NGUYEN
PRIMARY EXAMINER

November 11, 2006

Conferees:

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Enclosures: IDS submitted on August 30, 2006 and August 16, 2006. The IDS submitted on August 16, 2006 is not considered because the IDS lacks item (e) required by rule 1.97(d)